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SENATE

REPORT
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# NATIONAL FISH AND WILDLIFE FOUNDATION ESTABLISHMENT ACT AMENDMENTS OF 1987

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DECEMBER 15, 1987.—Ordered to be printed

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Mr. BURDICK, from the Committee on Environment and Public Works, submitted the following

## REPORT

[To accompany S. 1389]

The Committee on Environment and Public Works, to which was referred the bill (S. 1389) to amend the National Fish and Wildlife Foundation Establishment Act with respect to management, requisition, and disposition of real property, reauthorization, and participation of foreign governments, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

### GENERAL STATEMENT

This legislation amends the National Fish and Wildlife Foundation Establishment Act to expand the role of the National Fish and Wildlife Foundation. The bill expands the purposes of the Foundation to include participation with foreign governments, entities and individuals to conserve fish, wildlife and plants in other countries and to allow the Foundation to conduct business abroad and use federally appropriated funds for projects in other countries. The bill also amends the Act to authorize an increase in appropriations from $1 million over 10 years to $5 million annually to the Foundation for fiscal years 1988 through 1992 to match private and other non-Federal contributions and to provide administrative services. Finally, S. 1389 places restrictions on the use of Federal funds for land acquisition to protect the Federal interest in any lands acquired with these Federal matching funds and to prevent the Foundation from becoming a significant Federal land-holding entity.

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## Purpose and Background

### *History of the National Fish and Wildlife Foundation Establishment Act*

The National Fish and Wildlife Foundation is an independent, private conservation organization that was created by the National Fish and Wildlife Foundation Establishment Act (Public Law 98–244) in 1984 to accept private gifts for projects to enhance fish, wildlife and plant resources. The act also authorized appropriation of Federal funds to match private and other non-Federal contributions that are donated to the Foundation.

The mission of the Foundation is to develop private sector support for selected programs and activities of the U.S. Fish and Wildlife Service that can not be addressed adequately through traditional governmental channels, and to conduct other programs that will enhance the Nation's fish, wildlife and plant resources. The Foundation encourages cooperative efforts between public agencies and private organizations.

The Foundation focuses its efforts in 4 general areas: (1) habitat protection and restoration, (2) research, (3) public awareness and education, and (4) species and refuge management.

Funding is provided largely by private individuals and corporations and foundations—$1.75 million has been raised from these sources to date. The Foundation's enabling legislation currently allows a maximum appropriation of $1 million to match private contributions on a one for one basis. Congress appropriated $350,000 ($100,000 in operating support and $250,000 in matching funds) for fiscal year 1987.

The Foundation's program focus is on the development of cooperative projects with Federal, State, and private organizations to facilitate the implementation of priority fish, wildlife and plant conservation projects nationwide. The Foundation's first 3-year plan identifies three long-term initiatives focusing on public policy, education and training, and implementation of the North American Waterfowl Management Plan.

The impetus for S. 1389 stems from the success of the Foundation in fund raising and in implementing a portfolio of over 30 projects nationwide (three of the present projects involve lands that have been donated to the Foundation), and from the need for the United States to initiate programs to further the North American Waterfowl Management Plan.

The North American Waterfowl Management Plan, a bilateral agreement signed by the United States and Canada in 1986, identifies eight major programs to protect and restore almost six million acres of habitat for migratory birds over the next 15 years. Specifically, the Plan calls for the protection of 3.6 million acres of wetlands in the prairie pothole region of Canada. In the U.S. the following five areas are identified for priority protection:

a. 1.1 million acres of wetlands and adjoining uplands in the Prairie Pothole Region of the U.S. Midwest;

b. 686,000 additional acres of wintering waterfowl habitat of the lower Mississippi/Gulf Coast region;

c. 80,000 additional acres along the Great Lakes and St. Lawrence lowlands of the U.S.;

d. 80,000 additional acres of wintering habitat in California's Central Valley; and

e. 50,000 acres of coastal wetlands on the East Coast.

The North American Waterfowl Management Plan recommends that the public and private sectors in both countries cooperate in the planning, funding and implementation of various joint ventures. The Plan does not specify any means of implementation nor does it commit either country to specific actions or funding. However, it does recognize that "the financial participation of conservation organizations is critical to the implementation of the North American Plan."

The Foundation's focus in this area has been on stimulating the participation of the private sector to support the implementation of the North American Waterfowl Management Plan and on coordinating public and private efforts around the joint venture projects targeted for priority action. The Foundation is not intended to become a significant land acquisition or land management organization.

The first prototype or "first step" joint venture targeted for implementation by United States and Canadian participants is in the prairie pothole region of Canada and within that region the Quill Lakes area of Saskatchewan. Eleven States (Arkansas, California, Colorado, Illinois, Missouri, New Jersey, New York, Oklahoma, South Carolina, Tennessee, and Texas) have pledged $1 million to support land acquisition and protection in the Quill Lakes area. Ducks Unlimited Inc. has pledged to provide a $1 million match for these State funds. The States and Ducks Unlimited have pledged to provide the Foundation with the $2 million in the hopes of obtaining a $2 million match from Congress. S. 1389 will authorize appropriations for use in such a match with State and private funds. The combined $4 million that would result from such an appropriation would then be matched by an additional $4 million from Canadian interests to acquire and restore wetlands and adjoining upland nesting habitat around Quill Lakes in this first year of the Plan's implementation. The Foundation also has secured a $250,000 leadership grant from a U.S. foundation to acquire lands in the pilot Quill Lakes project as part of the first step project.

Additionally, the Foundation has raised $200,000 to initiate a major wetland protection and restoration project in the Central Valley of California, in conjunction with the California Fish and Game Department and the California Waterfowl Association. This project is directed toward obtaining perpetual conservation easements from private duck clubs and individual land owners, as well as toward acquiring rice farms from private lenders.

In 1988 the Foundation plans to expand upon the first step matching fund project in Canada to attract additional support from states and private donors. Additionally, the Foundation will focus its efforts on the five priority joint venture regions in the United States to initiate private/public acquisition and restoration programs.

## SECTION-BY-SECTION ANALYSIS

### SECTION 1. PURPOSES OF THE FOUNDATION

Section 1 of S. 1389 amends the National Fish and Wildlife Foundation Establishment Act to expand the purposes of the Foundation to include participation with foreign governments, entities and individuals to conserve fish, wildlife and plants in other countries. The Foundation is given authority to conduct business abroad and, consequently, to use federally appropriated funds for projects in other countries.

The Foundation currently is administering a grant to study jaguars in Latin America. The amendments in the section 1 of the bill also will allow the Foundation to assist in U.S. efforts to implement the North American Waterfowl Management Plan with Canada. It is anticipated further that the Foundation may receive contributions in the future for projects benefiting fish, wildlife, and plants in other countries.

### SECTION 2. ACQUISITION, MANAGEMENT, AND DISPOSAL OF REAL PROPERTY

Section 2 of S. 1389 adds a new subsection to section 4 of the Act to place limitations on the use of Federal funds for land acquisition to protect the Federal interest in any lands acquired with these funds and to prevent the Foundation from becoming a significant Federal landholding entity.

First, new section 4(e) of the Act provides that if Federal matching funds are used, in whole or in part, to acquire interests in land, water or other real property, the interests must be long-term property interests. The term "long-term interest" means an absolute or fee simple interest, a lease hold interest in perpetuity, or an easement or right in perpetuity. Acquisition should be limited further to those purchasers of interests in land or water that contribute appreciably to the long-term conservation of fish, wildlife, and plant populations.

It is anticipated that the Foundation will acquire property interests that contribute to the goals of the U.S. Fish and Wildlife Service but will not engage in land or water management. The Foundation, therefore, should acquire lands and waters for conservation purposes that have been identified by the Service, the Migratory Bird Commission, or a state agency as having particular value for fish, wildlife or plants. If Federal matching funds are used in whole or in part, section 2 of S. 1389 provides that the Director of the U.S. Fish and Wildlife Service must consent in writing to the acquisition of any interests in real property by the Foundation. The Director should be apprised of the purpose for which the land, water or other property is being acquired, and the Director must determine that mechanisms to provide for the long-term conservation of that land are in place before agreeing to its acquisition.

Second, under section 2 of S. 1389, the Foundation is required to convey lands acquired in whole or in part with Federal matching funds to the Service for inclusion in the National Wildlife Refuge System if the Director of the U.S. Fish and Wildlife Service makes such a request in writing within one year after the date of acquisi-

tion. The Service may compensate the Foundation for that portion of the cost of the property that was acquired by means other than Federal matching funds. Alternatively, the Foundation may convey any acquired property to the Service with no valuable consideration.

Third, section 2 of S. 1389 provides that lands acquired in whole or in part with Federal matching funds may be conveyed to other persons by the Foundation only if the Director of the U.S. Fish and Wildlife Service finds that the conveyance is subject to terms and conditions that will ensure that the property will be administered for the long-term conservation and management of fish and wildlife and in a manner that will provide for appropriate public access and use. The Director and the Foundation must ensure that any property conveyed to other persons is protected in perpetuity. This should be accomplished through the inclusion of appropriate provisions in the deed to property to ensure adequate protection and public use. Clauses that retain for the Foundation rights of reversion if the Foundation finds that the property is not being administered for the long-term conservation and management of fish and wildlife also should be incorporated. The term "person" as used in this section includes an individual, an agency of a State government or political subdivision thereof, or an agency of a foreign government.

Fourth, this section provides that if the Foundation acquires property in whole or in part with Federal matching funds and does not convey it to the U.S. Fish and Wildlife Service or another person, the Foundation shall administer that property for the long-term conservation and management of fish and wildlife and in a manner that will provide for appropriate public access and use. The Foundation should not typically hold the land it acquires, but rather turn it over to the U.S. Fish and Wildlife Service for management as part of the National Wildlife Refuge System or to the appropriate State fish and wildlife agency or to another governmental entity or private conservation organization that can appropriately manage the property.

Fifth, this section provides that property acquired by the Foundation in whole or in part with Federal matching funds may be disposed of only if the Foundation and U.S. Fish and Wildlife Service Director agree that the land is no longer valuable for fish and wildlife conservation and that the purposes of the Foundation would be better served by other use of the Federal funds. Property may not be disposed of for less than fair market value. The proceeds of such sales revert to the Foundation for other land acquisition and activities. The Foundation should notify this Committee of property disposals and expenditures of proceeds from property disposals.

### SECTION 3. REIMBURSEMENT FOR ADMINISTRATIVE SERVICES

Section 3 of S. 1389 clarifies a provision that allows the Foundation, at its own initiative, to reimburse the Secretary of the Interior for administrative services.

SECTION 4. AUTHORIZATION OF APPROPRIATIONS

Section 4 of the bill amends section 10 of the Act to authorize appropriation of $5 million annually to the Foundation for fiscal years 1988 through 1993 to match private and other nonfederal contributions and to provide administrative services. The enabling legislation that estabished the Foundation authorized appropriation of $1 million in matching funds over a period of 10 years.

At the time the enabling legislation was considered by the Committee, it was anticipated that the donations received by the Foundation would not surpass a few thousand dollars per year, and that the $1 million spending limit would provide sufficient funds. However, the Foundation has been extremely successful in using the very limited matching funding made available by the Congress to attract private donations in support of its activities. The amendment in section 4 of the bill takes advantage of this success to provide greater financial support for conse vation projects of national importance with fewer Federal dollars.

The Act currently authorizes appropriations to match private contributions made to the Foundation on a one for one basis. Section 4 of S. 1389 authorizes appropriations to match "partially or wholly" such contributions. This change in the act recognizes that certain projects undertaken by the Foundation may most appropriately be funded solely with private contributions or may be matched with Federal funds on a basis less than one for one.

## Hearings

The Subcommittee on Environmental Protection of the Committee on Environment and Public Works held a hearing in Washington, DC, on September 10, 1987.

Testimony was received from representatives of the U.S. Fish and Wildlife Service, National Fish and Wildlife Foundation, Wildlife Habitat Canada, state wildlife agencies, and Ducks Unlimited, Inc. Written testimony was submitted by the Canadian Wildlife Service.

## Rollcall Votes

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

There were no rollcall votes taken during the Committee's consideration of this bill. The bill was ordered reported on November 10, 1987, by a unanimous voice vote.

## Regulatory Impact

Section 11(b) of rule XXVI of the Standing Rules of the Senate require the Committee to evaluate the regulatory impact of the reported bill.

It is not aticipated that this bill will impose any significant new regulatory burden.

## COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires each report to contain a statement of the cost of the reported bill prepared by the Congressional Budget Office. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, December 3, 1987.*

Hon. QUENTIN N. BURDICK,
*Chairman, Committee on Environment and Public Works,*
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 1389, a bill to amend the National Fish and Wildlife Foundation Establishment Act with respect to management requisition, and disposition of real property, reauthorization, and participation of foreign governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

JAMES BLUM
(For Edward M. Gramlich, Acting Director).

### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1389.

2. Bill title: A bill to amend the National Fish and Wildlife Foundation Establishment Act with respect to management requisition, and disposition of real property, reauthorization, and participation of foreign governments.

3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, November 10, 1987.

4. Bill purpose: S. 1389 would amend provisions in the National Fish and Wildlife Foundation Establishment Act (Public Law 98–244) regarding the Foundation's land acquisition and disposition practices. In addition, Section 4 of the bill would authorize appropriations to the Department of the Interior of $5 million a year for fiscal years 1988–1993. These funds would be made available to the Foundation for administrative expenses and matching contributions for land acquisition projects.

5. Estimated cost to the Federal Government:

[By fiscal yea:, in million of dollars]

| | 1988 | 1989 | 1990 | 1991 | 1992 |
|---|---|---|---|---|---|
| Net additional authorization | 4.5 | 5.0 | 5.0 | 5.0 | 5.0 |
| Estimated outlays | 2.1 | 3.6 | 4.9 | 5.0 | 5.0 |

The costs of this bill fall within budget function 300.

Basis of estimate: For the purposes of this estimate, it is assumed that the full $5 million authorized will be appropriated for each

fiscal year. In the above table, the remaining $500,000 of the current authorization has been netted out against the total authorization for 1988 so as to show the additional funding that would result from this bill. (Public Law 98–244 authorized the appropriation of a total of $1 million over ten years. Of that amount, approximately $500,000 was appropriated during fiscal years 1986 and 1987.) Outlays have been estimated on the basis of historical spending patterns.

6. Estimated cost to State and local governments: None.
7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Deborah Reis.
10. Estimate approved by: C.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

## Departmental Reports

The Subcommittee on Environmental Protection received the following statement from the Director of the U.S. Fish and Wildlife Service:

U.S. Department of the Interior,
Fish and Wildlife Service,
*Washington, DC, September 28, 1987.*

Hon. George Mitchell,
*Chairman, Subcommittee on Environmental Protection, Committee on Environment and Public Works, U.S. Senate, Washington, DC.*

Dear Mr. Chairman: Subsequent to my appearance before the Subcommittee, I have engaged Administrative officials in further discussions of the amendments to the National Fish and Wildlife Foundation Act contained in S. 1389 and H.R. 2020.

Specifically, we have reconsidered the merits of the increased funding authorization for the Foundation and the authorization for the Foundation to use existing Federal funding that might be available to finance the acquisition of Canadian waterfowl nesting habitat.

The Foundation plans to match each Federal dollar with two from non-Federal sources, and it should be noted that about 75 percent of the waterfowl harvested in the United States are produced in Canada. Thus, consistent with the Administration's effort to stretch Federal budgetary resources and achieve a trebling of the effect of limited tax dollars, the Department does not object to the increased funding authorizations contained in S. 1389 and H.R. 2020. As indicated in my testimony, however, the Foundation's international authority should be limited to activities that have a direct and predictable beneficial effect on waterfowl populations in the United States.

Finally, Mr. Chairman, we remain firmly dedicated to the worthy goals of the North American Waterfowl Plan. We are encouraged by the early successes of the Fish and Wildlife Foundation, and we are excited about many of the activities underway in the context of the North American Waterfowl Plan. We look for-

ward to working with you to continue and expand upon the progress made thus far by the Foundation.

Sincerely,

FRANK DUNKLE, *Director.*

## CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirements of section 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

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